

Subdivider: KB Home South Bay Inc.
Project Name: Terra Serena

File No.: 100.01.214
Private Job Account No.: 3160
Tract/Parcel Map No.: 9698
Council Approval Date: _____
Completion Period: Per Section B.5

17

CITY OF MILPITAS
SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, executed this _____ day of _____, 2005, at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "City") and

KB Home South Bay, Inc., A California Corporation

(hereafter referred to as "SUBDIVIDER"):

RECITALS

- A. SUBDIVIDER desires to subdivide certain land in the CITY in accordance with a map filed with the City Council of the CITY, marked and designated **Tract No. 9698 (Terra Serena)**.
- B. The Parties acknowledge that SUBDIVIDER and CITY have entered into a reimbursement agreement which makes funds available to SUBDIVIDER for the costs of making the improvements identified in this Agreement, Santa Clara County/Milpitas Redevelopment Agency Infrastructure Escrow Account, Escrow No. 6119900-001. The Parties further acknowledge that SUBDIVIDER'S obligation to construct all of the improvements identified in this Agreement is independent of the funds available to SUBDIVIDER in the aforementioned Escrow Account.
- C. Said map shows certain streets and easements which are offered for dedication for public use.

NOW, THEREFORE, in consideration of the mutual covenants terms and conditions herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

- 1. SUBDIVIDER agrees that it will construct at its sole cost and expense, which includes but is not limited to funds available through the escrow identified in Recital B above, all those certain improvements listed in the Public Improvement Plan and Specifications for:
 - I. **30" Sanitary Sewer Relocation (Improvement Plan No. 2-1033)**
 - II. **Alvarez Court (Improvement Plan 2-1034)**
 - III. **Thompson Street, Thompson Court & Machado Avenue (Improvement Plan No. 2-1035)**
 - IV. **Abel Street Improvement from Great Mall Parkway to Corning Avenue (Improvement Plan No. 2-1047)**
 - V. **Tract 9698 Terra Serena (Improvement Plan 2-1048)**
 - VI. **Elm Park**
 - VII. **Hetch-Hetchy Park**
 - VIII. **Survey Monumentation Tract 9698**

approved by said City Council on _____, including setting survey monuments and identified by Private Job Account No. 3160 (hereby referred to and made a part hereof the same as if set forth at length herein).

2. No improvement work shall be undertaken by SUBDIVIDER until all plans and specifications have been submitted to the City Engineer and have been approved by him in writing nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of CITY.
3. SUBDIVIDER agrees that said improvements will be constructed under and subject to the inspection of and to the satisfaction of the City Engineer.
4. SUBDIVIDER agrees that it will construct said improvements in accordance with the requirements set forth in said "Improvement Plans and Specifications" referred to above, all applicable ordinances, resolutions and orders of CITY enacted or adopted by said City Council as amended or revised as of the date hereof, and governing statutes of the State of California or of the United States of America.
5. All said improvements shall be completed and ready for final inspection by the City Engineer within:
 - I. 24 months of the date of execution of this Agreement,
 - II. prior to City issuance of Occupancy Permit Final inspection of the last residential building, or
 - III. as dictated in the Conditions of Approvalwhichever occurs first. If SUBDIVIDER shall fail to complete the work required by this Agreement within same time, CITY may, at its option, and after giving ten (10) days written notice thereof to SUBDIVIDER, complete the same and recover the full cost and expense thereof from SUBDIVIDER.
6. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY as obligee in the penal sum (in aggregate) of:

I.	30" Sanitary Sewer Relocation	\$716,330
II.	Alvarez Court (Bridge only)	\$1,086,250
III.	Alvarez Court (Street improvement & park)	\$980,000
IV.	Thompson Street and Court, Machado Avenue (including landscaping & wall)	\$5,244,500
V.	Abel Street Improvement Great Mall Parkway to Corning Ave.	\$8,876,700
VI.	Tract 9698 Terra Serena	\$3,927,900
VII.	Elm Park	\$774,200
VIII.	Hetch-Hetchy Park	\$1,676,000
IX.	Tract 9698 Survey Monumentation	\$50,000
Total		\$23,331,880

Twenty-three million three hundred thirty-one thousand eight hundred eighty dollars (\$23,331,880), conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this Agreement and conditioned upon the full and faithful performance of any and all improvement work required hereunder. The security may be in the form of separate performance bonds for each of the improvements required herein, provided that the aggregate of all such bonds totals twenty-three million three hundred thirty-one thousand eight hundred eighty dollars (\$23,331,880).

7. In the event that SUBDIVIDER fails to perform any obligation on its part to be performed hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligation, and if suit be brought by CITY to enforce this Agreement, SUBDIVIDER, agrees to pay costs of suit and reasonable attorney's fees to be fixed by the Court.

8. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY, as obligee, in the penal sum (in aggregate) of Twenty-three million three hundred thirty-one thousand eight hundred eighty dollars (\$23,331,880), insuring to the benefit of any contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder. The security may be in the form of separate payment bonds for each of the improvements required herein, provided that the aggregate of all such bonds totals twenty-three million three hundred thirty-one thousand eight hundred eighty dollars (\$23,331,880).
9. SUBDIVIDER agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.
10. Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.
11. Prior to commencing any work, SUBDIVIDER, agrees to obtain an Encroachment Permit from the Engineering Division and at SUBDIVIDER's expense, provide CITY with a duplicate public general liability and automobile liability insurance policy with endorsements showing the CITY as additional insured which insures CITY, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 for each occurrence and \$1,000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of SUBDIVIDER. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but is not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to CITY of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said CITY, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said CITY, its officers and employees shall not be precluded from claims against other insured parties thereunder; (g) be maintained in effect until final acceptance of SUBDIVIDER's improvements. If SUBDIVIDER does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and SUBDIVIDER shall forthwith repay City the premium therefor.
12. SUBDIVIDER agrees that any general contractor engaged by the SUBDIVIDER for any work of improvement under this Agreement will have:
 - a) In full force and effect, Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give CITY at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.
 - or
 - b) In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the SUBDIVIDER or its general contractor shall immediately notify the CITY in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.

13. SUBDIVIDER agrees to indemnify and save harmless CITY, City Council, City Engineer or any other officer or employee of CITY from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of SUBDIVIDER, its officers, agents, employees, contractors or subcontractors or any officer, agent or employee thereof.
14. SUBDIVIDER agrees to comply with all special conditions and notes of approval for this development, pay all fees, and costs and expenses incurred by CITY in connection with said subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain Private Job Account No. 3160 for this purpose with additional deposits as required by CITY.

A. Fees to be paid upon execution of this agreement:

a)	Plan-check and Inspection (Partial Deposit)	(PJ3169-13-2500)	100,0000.00
b)	Right-of-Way Reimbursement Fee	(310-3614-XXXX50)	<u>N/A</u>
c)	Other <u>Traffic Impact Fee</u>	(100-3718)	<u>Paid</u>
Sub-total			\$100,000.00

B. Fees to be paid at the time of building permit issuance:

a)	Water Connection Fee	(402-3715)	<u>\$45,050</u>
	(\$350 per lot (115 lots) and \$8 x 600 LF)		
b)	Potable Water Meter Fee	(400-3662)	<u>\$64,095.60</u>
c)	Recycled Water Meter Fee	(406-3622)	<u>\$1,480.56</u>
d)	Sanitary Sewer Connection Fee	(452-3715)	<u>\$26,450</u>
	(\$200 lots (115 lots) and \$3 x 1,150 LF)		
e)	Sewer Treatment Plant Fee	(452-3714)	<u>\$166,040</u>
	(104 single units x \$880 and 108 multi-unit x \$690)		
f)	Sewer Bypass Benefit Fund	(HA1320-2500)	<u>Paid</u>
g)	Storm Drain Connection Fee	(340-3711)	<u>N/A</u>
h)	Parksite Fee	(320-3712)	<u>Paid</u>
i)	Hillside Water Reimbursement	(HA1324-2500)	<u>N/A</u>
j)	Art Contribution (See Exhibit "A")		
	(at issuance of 342 nd building permit)		<u>\$30,000</u>

Sub-total **\$433,116.16**

Total **\$433,116.16**

15. Upon completion of the work and before City Initial Acceptance of the work thereof, SUBDIVIDER shall provide the City a complete original mylar of "Record Drawing" showing all the changes from the original plan.
16. Upon completion of the work, and before City Council final acceptance thereof, SUBDIVIDER shall be billed for and pay the outstanding balance of the project's private job account or shall be refunded the difference between the amount of City costs and expenses in each instance and the amount of said remittance.
17. If any of the improvements to be completed by SUBDIVIDER as required by this Agreement cannot be completed because SUBDIVIDER or the CITY lacks sufficient interest or title in the land on which the improvements are to be constructed, SUBDIVIDER agrees to complete any such improvement at such time as the CITY acquires an interest in the land that will permit the improvements to be made. Notwithstanding this requirement, prior to issuance of any building occupancy/final inspection for the residential development West of Abel Street which exceeds 50 percent of the residential units on the West side of Abel Street, the proposed public streets A, B and C., including the traffic signal, shall be constructed to the satisfaction of the City Engineer.

SUBDIVIDER will pay all costs necessary for the acquisition of any easement or right-of-way, including all engineering fees and costs, environmental clean-up fees and costs, legal fees and costs, and other incidental costs sustained by CITY in connection with said acquisition, which may include eminent domain proceedings and any condemnation award and damages (including all costs awarded in said eminent domain proceedings). SUBDIVIDER further agrees that prior to the institution of any eminent domain proceedings and upon ten (10) days written notice from CITY, SUBDIVIDER will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages:

18. City will accept on behalf of the public, the dedication of the streets, and easements offered for dedication, and will supply water for sale to and within said subdivision, provided however, that as a condition precedent to said initial acceptance and to supplying water, SUBDIVIDER shall perform the covenants, terms and conditions of this Agreement.
19. SUBDIVIDER hereby irrevocably offers to convey title of the water and sanitary sewer mains and lines, and appurtenances constructed in or for said subdivision to CITY. Upon final acceptance of said improvements by CITY, said title will be deemed to be accepted by CITY in the event that title has not previously passed to CITY by operation by law.
20. SUBDIVIDER agrees to comply with all requirements set forth on **Exhibit "A"** (attached hereto, hereby referred to and made a part hereof).
21. This Agreement shall be deemed to include any final conditions imposed by CITY upon the approval of the tentative and final maps related to public improvements of said subdivision.
22. SUBDIVIDER agrees that, upon ten (10) days written notice from CITY, it will immediately remedy, restore, repair or replace, at its sole expense and to the satisfaction of City Engineer, all defects, damages or imperfections due to or arising from faulty materials or workmanship appearing within a period of one-year after the date of initial acceptance of all said improvements. If SUBDIVIDER shall fail to remedy, restore, repair, or replace said defects, damages or imperfections as herein required, CITY may at its option, do so and recover the full cost and expense thereof from SUBDIVIDER.
23. This Agreement shall bind the heirs, administrators, executors, successors, assigns and transferees of SUBDIVIDER. It is agreed and understood that the covenants in this Agreement shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by SUBDIVIDER

expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY, its successors and assigns.

24. Nothing contained in this Agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the CITY.
25. Time shall be of the essence of this Agreement. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by SUBDIVIDER hereunder shall be subject to approval of the City Attorney as to form.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

*Signed and Sealed this _____ day of _____, 2005.

CITY OF MILPITAS

By: _____ ** Attach proper acknowledgment.
Charles Lawson, City Manager

Subdivider: KB Home South Bay, Inc., A California Corporation

By: _____ ** Attach proper acknowledgment.
(Typed Name and Capacity/Title)

By: _____ ** Attach proper acknowledgment.
(Typed Name and Capacity/Title)

APPROVED AS TO FORM THIS

_____ day of _____, 2005

By: _____
City Attorney

APPROVED AS TO SUFFICIENCY THIS

_____ day of _____, 2005

By: _____
Greg Armendariz, City Engineer

* Date should be same as date on Page 1 of 6.

** It is essential that the signatures be acknowledged before a California Notary Public and attach proper acknowledgment.

EXHIBIT "A"

1. The Subdivider agrees to complete necessary Water Service Agreements, and pay the water meter and connection fees prior to Building Permit issuance.
2. The Subdivider agrees to pay to the City an Art Contribution Fee of \$30,000.00, prior to receipt of a building permit for the 342nd residential unit.
3. The Subdivider agrees to complete the construction of all public improvements and settings of all Survey Monuments before the City issuance of the Occupancy Permit/Final Inspection of the last residential building.

The Subdivider agrees to comply with the special conditions and notes of approval for this Subdivision.

Principal: KB Home South Bay Inc.
Project Name: Terra Serena

Project No. 3160
Bond No. _____

**CITY OF MILPITAS
FAITHFUL PERFORMANCE BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit: Public Improvement for Terra Serena as listed on Section C.1 of the subdivision improvement agreement.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and _____, as surety, are held and firmly bound unto the City of Milpitas, California, in the penal sum of Twenty-three million two hundred eighty one thousand eight hundred twenty-one dollars (\$23,281,821), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, its heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 2005.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
(type name and office)

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 2005.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 2005.)

THIS JURAT MUST BE COMPLETED
) BY A NOTARY IF THE VERIFICATION
) IS EXECUTED OUTSIDE OF CALIFORNIA
)
)

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

Principal: KB Home South Bay Inc.
Project Name: Terra Serena

Project No. 3160
Bond No. _____

**CITY OF MILPITAS
LABOR AND MATERIALS BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit: Public Improvement for Terra Serena as listed on Section B.1 of the subdivision improvement agreement.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, said Principal and the undersigned as corporate surety, their heirs, successors, executors and administrators, are held firmly bound, jointly and severally, unto the City of Milpitas California, and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the aforesaid agreement in the sum of Twenty Twenty-three million two hundred eighty one thousand eight hundred twenty-one dollars (\$23,281,821), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 2005.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
(type name and office)

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 2005.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 2005.)

THIS JURAT MUST BE COMPLETED
) BY A NOTARY IF THE VERIFICATION
) IS EXECUTED OUTSIDE OF CALIFORNIA
)
)

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

Principal: KB Home South Bay Inc.
Project Name: Terra Serena

Project No. 3160
Bond No. _____

**CITY OF MILPITAS
SURVEY MONUMENTATION BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to install and complete certain designated public improvements, including setting of survey monuments by an engineer or surveyor prior to a certain date.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force an effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and _____, as surety, are held and firmly bound unto the City of Milpitas, California, and that Engineer or Surveyor, who set said survey monuments in the penal sum of **fifty thousand dollars (\$50,000.00)**, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, it heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 2005.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
(type name and office)

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 2005.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 2005.)

THIS JURAT MUST BE COMPLETED
) BY A NOTARY IF THE VERIFICATION
) IS EXECUTED OUTSIDE OF CALIFORNIA
)
)

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

Subdivider: KB Home South Bay Inc.
Project Name: Terra Serena

Project No. 3169

CITY OF MILPITAS

**CERTIFICATE RELATING TO WORKER'S COMPENSATION
INSURANCE PURSUANT TO LABOR CODE SECTION 3800**

(Subdivision)

I, THE UNDERSIGNED, HEREBY CERTIFY that at all times during the performance of any work of improvement under agreement with the City of Milpitas. (Check one of the following):

_____ Any general contractor engaged by me for said work will have in full force and effect Worker's Compensation Insurance pursuant to the attached certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least ten days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

_____ Or has in full force and effect and have attached hereto a Certificate of Consent to Self-insure issued by the Director of Industrial Relations or the insurer may be attached).

I declare under penalty of perjury that the foregoing is true and correct and executed on _____
at _____.
(Date) (City)

By: _____

Official Title

On behalf of: _____
Contractor

NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND
MUST MEET THE REQUIREMENTS SET FORTH ABOVE.

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE DIRECTOR OF INDUSTRIAL RELATIONS, 888 NORTH FIRST STREET, SAN JOSE, CALIFORNIA, TELEPHONE: 277-1265.

Subdivider: KB Home South Bay Inc.
Project Name: Terra Serena

Project No. 3160

CITY OF MILPITAS
CERTIFICATE OF WORKER'S COMPENSATION INSURANCE

Pursuant to California Labor Code Section 3800, the undersigned Insurer certifies that it is an admitted Worker's Compensation Insurer, that it has issued a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner (bearing policy number _____) to _____ in connection with the above project, title and subdivider. Said policy is now in full force and effect and the full deposit premium has been paid. At least 10 days advance notice of the cancellation of said policy will be given to the City of Milpitas. The expiration date on said policy is _____.

Dated: _____

INSURANCE COMPANY

AUTHORIZED REPRESENTATIVE (Signature)

Address: _____

AUTHORIZED REPRESENTATIVE (Type Name)

Address: _____

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer.
Executed at _____, California, on the _____ day of _____, 2005. **

Authorized Signatory (Sign)

(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public, this _____ day of _____, 2005.

(Sign)

(Type Name)

Subdivider: **KB Home South Bay Inc.**
Project Name: **Terra Serena**

Project No. **3160**

CERTIFICATE OF GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE

The undersigned insurance company certifies to the City of Milpitas, California, that it has issued a general public liability insurance policy, policy number _____ to _____ in connection with a work of improvement generally described as Street and underground improvement on _____. The policy names the City of Milpitas, its officers and employees (as additional insured) and insures said City, officers and employees against liability arising out of activities, including but not limited to, coverage for all work performed by or on behalf of permittee, products and completed operations of the permittee; the premises owned, occupied or used by the permittee; or automobiles owned, leased, hired or borrowed by the permittee in the following minimum amounts and for the following periods:

<u>COVERAGE</u>	<u>POLICY NUMBER</u>	<u>POLICY PERIOD</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Bodily Injury			\$1,000,000 each person) \$1,000,000 each occurrence))*
(2) Property Damage			\$1,000,000 each occurrence) \$1,000,000 aggregate)

This policy provides: (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) that said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City Clerk.

Address of Signatory:

Insurance Company

Authorized Signature (Sign)

Authorized Signature (Type)

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer.
Executed at _____, California, on the _____ day of _____, 2005. **

Authorized Signatory (Sign)

(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public, this _____ day of _____, 2005.

(Sign)

(Type Name)

** If this certificate is executed outside of California, it must be sworn to before a Notary Public.

FORM APPROVED: _____, 2005, by _____

Control No. 2005030

Recording Requested by
and when Recorded, return to:

CITY OF MILPITAS
455 E. CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE
§§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT

This Stormwater Management Facilities Operation and Maintenance Agreement ("AGREEMENT") is made and entered into this _____ day of _____, 2005, by and between KB HOME South Bay Inc., A California Corporation (hereinafter referred to as "Property Owner") and the City of Milpitas, a municipal corporation of the State of California ("City").

RECITALS:

This AGREEMENT is made and entered into with reference to the following facts:

WHEREAS, the Permanent Stormwater Pollution Prevention Measures installed (hereinafter referred to as "BMPs" (Best Management Practices)) must be maintained for the development called, Terra Serena (Elmwood), located at South Abel Street, MILPITAS, Santa Clara County, State of California and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "property"); and,

WHEREAS, the Property Owner is the owner of real property more particularly described on the attached as Exhibit A; and,

WHEREAS, the City's Stormwater and Urban Runoff Pollution Control Ordinance requires proper operation and maintenance of the BMPs constructed on this property; and,

WHEREAS, the development conditions of approval require that BMPs, as shown on the approved Stormwater Control Plan be constructed and properly operated and maintained by the Property Owner; and,

WHEREAS, the City has approved the Stormwater Control Plan described on Exhibit B prepared by RJA on the day of October 21, 20 05, as this Plan may be subsequently modified from time to time with City's approval; and,

WHEREAS, the Stormwater Control Plan includes an annual inspection checklist for the BMPs constructed on this property, and,

WHEREAS, this Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the City's Ordinance and the approved Plans.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1

Responsibility for Operation and Maintenance: The Property Owner will make available copies of the approved Stormwater Control Plan (hereinafter the "Plans") at the site with the facility or property manager and must maintain the BMPs in good working condition acceptable to the City for the life of the project, and in compliance with the Ordinance and the approved Plans.

SECTION 2

Inspection by Property Owner: The Property Owner, at its own expense, shall conduct annual inspections during the month of September or October of each year. The annual inspection report shall include completion of the checklist described in the approved Stormwater Control Plan. The BMPs must be inspected by a qualified independent inspector who is acceptable to the City. The Property Owner must submit the Inspection Report on these BMPs to the City Engineer within 30 days after each inspection. The Annual Inspection Report submitted shall be accompanied by a nonrefundable processing fee per the City's standard fee schedule.

SECTION 3

Facility Inspection by the City: The Property Owner grants permission to the City, its authorized agents and employees, to enter the property, and to inspect the BMPs upon prior notice to the Property Owner when the City deems it necessary to enforce provisions of the City's Stormwater and Urban Runoff Pollution Control Ordinance. The City may enter the premises during normal business hours and with prior notice to inspect the premises and BMP operation, to inspect and copy records related to storm water compliance, and to collect samples and take measurements.

SECTION 4

Failure to Perform Required Facility Repairs or Maintenance by the Property Owner: If the Property Owner, or its successors fail to maintain the BMPs in good working order and in accordance with the approved Plans and the City's Ordinance and such failure continues for ten (10) business days after the date that the City provides Property Owner with written notice of such failure, the City, with prior notice, may enter the property to return the BMPs to good working order. The City is under no obligation to maintain or repair the BMPs, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this section takes any action to return the BMPs to good working order, the Property Owner shall reimburse the City for all the costs incurred by the City. The City will provide the Property Owner with an itemized invoice of the City's costs and the Property will have 30 days to pay the invoice. If the Property Owner fails to pay the invoice within 30 days, the City may secure a lien against the real property of the Property Owner in the amount of such costs. This Section 4 does not prohibit the City from pursuing other legal recourse against the Property Owner.

SECTION 5

Successors and Assigns: This Agreement applies to the Property Owner and its successors. This agreement runs with the land and imposes a continuing obligation on anyone who owns the property. Upon transfer of the property, the Property Owner shall provide to the new owner with the current Plans.

SECTION 6

Indemnity: The Property Owner indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City from the construction, presence, existence or maintenance of the BMPs by the Property Owner, or from any personal injury or property damage that may result from the City entering the property under Section 4. If a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend the claim and any resulting litigation at its own expense. If any judgment is entered against the City, or its authorized agents or employees, the Property Owner must pay all costs and expenses to satisfy the judgment.

The Parties acknowledge and agree that the Property Owner shall exercise and perform all duties and obligations contained in this Agreement until such time as Homeowners' Associations ("HOA") are formed to manage the continuing care, maintenance and condition of the property. Upon formation of the HOA's, the duties and responsibilities of Property Owner contained within this Agreement shall be transferred in writing to the respective HOA's. Property Owner agrees to include in all documents which effect and evidence a transfer of Property Owner's duties and obligations within this Agreement, which may include but shall not be limited to any Covenants, Conditions and Restrictions to which each HOA shall be subject, a transfer of this indemnity and all other duties and obligations of Property Owner within this Agreement. Property Owner shall be subject to this indemnity without interruption until the transfer of all duties and obligations between Property Owner and HOA become effective, or the Covenants, Conditions and Restrictions are recorded, whichever is later.

Severability: Invalidity of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

KB HOME South Bay Inc., A California Corporation

By: _____
print name:
print title:

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

By: _____
City Manager

By: _____
City Engineer as to content

By: _____
City Attorney as to form

ALL PURPOSE ACKNOWLEDGMENT

State of California)
) s.s.
County of _____)

On _____, before me,
_____, personally appeared

_____, personally known to me;
_____ or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

_____ Individual(s)
_____ Corporate Officer(s) Titles _____ and _____
_____ Partner(s) _____ Limited _____ General
_____ Attorney-in-Fact
_____ Trustee(s)
_____ Guardian/Conservator
_____ Other : _____

Signer is representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document _____
Number of pages: _____ Date of document: _____
Signer(s) other than named above: _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

EXHIBIT A
Legal description

Tract No. 9698, as recorded on _____ in Map Book _____
Pages _____ through _____, Record of Santa Clara County, California.

THE EXCERPTS OF THE FINAL MAP AND
IMPROVEMENT PLANS FOR THIS
AGENDA ITEM IS AVAILABLE AT THE
PUBLIC INFORMATION DESK OR THE
CITY CLERK'S OFFICE LOCATED AT
CITY HALL,
455 E. CALAVERAS BLVD.,
MILPITAS, CA